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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-731

SUN OIL COMPANY, GENERAL CRUDE OIL COMPANY, M. H. MARR, CONTINENTAL OIL COMPANY,
Petitioners,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, PHILADELPHIA GAS WORKS DIVISION OF UGI CORPORATION, TEXAS EASTERN TRANSMISSION CORPORATION, FEDERAL POWER COMMISSION,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF OF PETITIONERS

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FIDELITY PRINTING COMPANY, HOUSTON

In The

Supreme Court of the United States

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No. 75-731

Sun Oil Company, General Crude Oil Company,
M. H. Marr, Continental Oil Company,
Petitioners,

v.

Public Service Commission of The State of New York,
Philadelphia Gas Works Division of UGI Corporation,
Texas Eastern Transmission Corporation,
Federal Power Commission,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
District of Columbia Circuit

REPLY BRIEF OF PETITIONERS

Sun Oil Company, General Crude Oil Company, M. H. Marr and Continental Oil Company (Petitioners) respectfully submit this Reply Brief to Memorandum for the Federal Power Commission (Commission) and to Briefs in Opposition to the Petition for a Writ of Certiorari filed by Respondents Texas Eastern Transmission Corporation (Texas Eastern) and Public Service Commission of the State of New York (PSC).

Respondent Commission in its Memorandum agrees with Petitioners "with respect to the merits on both questions" raised by Petitioners (Commission Memorandum, p. 4).

The Commission does not oppose granting of the Petition because it "share[s] petitioners' view of the merits, and because the questions presented implicate public interest considerations." (id., p. 8). The Commission's only reservation, which we show is mistaken, is that the decision of the court below appears to be limited to the peculiar facts of this case (id., p. 7).

Texas Eastern in limited opposition also suggests that the case involves unique facts and is not of wide precedential value (Texas Eastern Brief, pp. 10-11). PSC contends that the issues raised "are exceedingly narrow in scope, affecting no general Commission policy, and indeed having no impact on any other proceeding." (PSC Brief, p. 6).

While Petitioners recognize the Court's heavy burden of cases, justice requires that this Court resolve the conflict created by the decision below with the Fifth Circuit's *Placid*[1] and this Court's *Mobil*[2] decisions. The case here is of very large consequence, involving approximately 70 million dollars in refunds to the four Petitioners. This huge burden alone would warrant consideration by this Court. Even as the poorest citizen is entitled to justice, so are Petitioners entitled to redress of the clear errors of the court below whose decision is in conflict with decisions of this Court.

Respondents suggest, without record support, that the Rayne lease sale is a limited, one-time situation which will not recur before the Commission or the courts. This is not true. Judicial cognizance may be taken of litigation now pending before the Commission[3] and the United States

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[1] *Placid Oil Company* v. *Federal Power Commission,* 483 F.2d 880 (5th Cir. 1973).

[2] *Mobil Oil Corp.* v. *Federal Power Commission,* 417 U.S. 283 (1974).

[3] *El Paso Natural Gas Company,* FPC Docket CP74-314.

District Court for the Western District of Texas[4] affecting some 89 other lease sale agreements involving natural gas reserves in the San Juan Basin area of New Mexico. In those pending cases, challenges are made concerning Commission jurisdiction over the San Juan lease sale agreements on the ground that those agreements are subject to Commission regulation based on the precedent of the *Rayne Field* case, here before the Court. If the jurisdictional claims are sustained by the Federal Courts or the Commission, there is a strong probability that the *Rayne* conditioning procedure of lease sale certification involved here will be of controlling effect in the Commission's exercise of jurisdiction over these and many other lease sale agreements. Consequently, the instant case may indeed "have wide precedential value" (Texas Eastern Brief, p. 11).

PSC, alone of the Respondents, contends that the Opinion 598 rates affirmed in *Placid*, *supra*, and *Mobil*, *supra*, are not applicable to the *Rayne* case (PSC Brief, p. 8). However, PSC misses the crucial point. It is not Opinion 598 *per se* which controls in *Rayne* as to refund levels, but Opinion 565-A, issued in the instant case.[5] More importantly, Petitioners do not rely on *Placid* and *Mobil* merely for their affirmance of the Opinion 598 rate levels, but rather for their complete repudiation and abrogation of the erstwhile Opinion 546 rate of 18.5¢ used by the court below. *Placid* and *Mobil* are controlling here because each affirmed completely the Commission's action in superseding *ab initio* the Opinion 546 rates by Opinion 598 (see Commission Memorandum, p. 7).

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[4] *El Paso Natural Gas* v. *Sun Oil Co., et al.*, USDC WD Tex. No. MO 74 CA 57, formerly USDC DC Nos. CA 1761-73, et al., transferred to WD Tex.

[5] This is also made clear by the Commission's Memorandum at pp. 6-7.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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